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Notes

ON THE

REVISED TENANCY BILL

1884

BY

THE EAST BENGAL LANDHOLDERS ASSOCIATION.

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NOTES ON THE BENGAL TENANCY BILL 1884.

CHAPTER I

PRELIMINARY.

Sec. 3. Sub. Sec. 1 The definition of "Estate" does not include such revenue-free or lakheraj lands as are not entered in the General Registers of the Collectorate. This may not appear to be defective *per se*. But it excludes unregistered lakherajdars from being "proprietors" (sub section. 2.) Then if sub section 3 of section 5 be taken into consideration with the above definitions, it will be apparent that an unregistered lakheraj-dar cannot have a *ryot* as his tenant nor can a tenant have the rights and privileges of a "ryot' even if he holds lands for the purpose of cultivation, when his immediate landlord is an unregistered lakherajdar. As an unregistered lakherajdar is not a proprietor and as he need not be a tenure holder, the difficulty arises as to whether a tenant holding land under such a lakherajdar can have the rights and privileges of ryots, even though he be holding the lands for the purpose of cultivation It is submitted that the proviso contained in sub section 3 of section 5, taken in conjunction with the above mentioned definitions of "Estate" and "proprietor" will preclude such tenants from enjoying the rights and privileges of ryots.

There is a further objection to the definition of "Estate" on similar grounds. It does not include such khas mehals as belong to Government and which are not entered in the Collector's General Register as revenue paying lands.

The proviso to this section again expressly excludes also such Government lands as are entered in the General Register of the Collector and thereby curtails the definition of estate as given in cl. c of sub section. 2 of section 3 of the Land Registration Act VII of 1876. B. C.

The effect of this would be that Government will not be deemed a "proprietor" in respect of such lands—and the tenants holding lands for cultivation under Government will be excluded from the right of acquiring and enjoying the privileges of ryots by reason of the above mentioned provision in sub section 3 of section 5.

The definition of "Proprietor" is defective in other ways also. The word "owning" used in the above definition if meant "to be the owner of" in the common and ordinary acceptation of the word then it is very doubtful whether the definition in question would include trustees and persons having a life interest only in the property; as well as *mutwallees* of *wakf* properties, *shebaits* of *debutter* estates, and managers of charitable or religious endowments and such other persons as proprietors.

The definition of proprietor as given in the Bill prepared by the Rent Commission had the word "owner"; and the use of the word "owning" in its place is certainly no improvement. If the word "proprietor" has been used in the present Bill in the like sense as "owner" has been defined in the English Public Health Act of 1875, to which reference was made by the Hon'ble Mr. Ilbert when he introduced the Bill of 1883 in Council and which says Owner means the person for the time being receiving the rack rent of the lands or premises in connection with which the word is used, whether on his own account, or as agent or Trustee for any other person, or who would so receive the same if such lands or premises were let at rack rent." Then it is submited that in order to avoid future doubts the definition of proprietor should be made as clear as is the like one in the English Act. On the other hand the definition in the Rent Commission's Bill, clearly included in the category of proprietors not only a person who was a sharer in an estate but also a person who had "*an interest*" in an estate. Under the present definition, it is doubtful whether a single individual, out of a number of persons who jointly own an estate, would be treated as a proprietor even separately.

Again, a person who as owner holds some specific lands in an estate or in any other way possesses an interest in the estate would have been recognised a proprietor under the said old definition. But it is very doubtful whether such a person may be reckoned as such under the present wording of this definition.

Sub-section 7—The words "one set of conditions" in this sub-section are indefinite and may raise difficult questions as to whether various parcels of lands constitute one holding or not though let out at different times.

CHAP. II.

Classes of Tenants.

Sec. 4—In the classification of tenants it appears that tenants holding lands other than arable lands have been purposely excluded. Yet the provision contained in sub-section 5 of Section 5 supposes the existence of such tenants and gives them certain rights and liabilities.

Again cl. b. of sub-section 4 makes ryots at fixed rent or at a fixed rate of rent a distinct class of tenants. This is against the recognised *ideas* of the country in the matter of classification of tenants. These numerous distinctions and classifications will only complicate the system of the law without any adequate advantage being gained by any side.

Although the definition of tenure holders, as given in the present Bill, is an improvement on what is to be found in the preceeding one, yet it is not at all precise. The sub-section 4 of S 5 which tries to distinguish a tenure holder from a ryot instead of removing rather creates difficulties on that head.

The word "primarily" used in the definition of tenure holders, although put in to cover cases other than those expressly included by the definition, will ultimately raise many difficult questions and make the definition altogether indefinite.

If the definitions of tenure-holder and ryot as given in the present Bill be admittedly faulty they should be set right instead of leaving the matter to be discussed and fought out in every case with *different* results.

If it be difficult for the legislature to give a better and more precise definition of the two classes of tenants it would be more defficult for the Courts to apply properly such definitions in contested cases.

For reasons stated in these notes with reference to the definitions of estate and proprietor, sub-section 3 of Sec. 5 should be expunged. The retention of this provision will be very injurious to the interests of ryots.

The presumption *provided* by sub-section 5 of Section 5 is most objectionable irrespective of the question as to whether such a class of tenants as is mentioned in this sub-section should or should not be classed as a tenure-holder. The provision for such a presumption will be a fruitful source of litigation between the landlords and tenants. It will do no body any good, but will on the contrary create more indefiniteness in the status of the tenants. It will further create many anomalies. Some tenants holding more than 100 Biggas of land will remain ryots. Some having the same quantity of land will be promoted to the position of tenure-holders on account of having sub-let a part of their holdings while others having the same quantity of land may remain tenants even after having sub-let the whole of their holding as the presumption is of a rebuttable nature.

How the presumption may be rebutted it is not easy to determine.

The principles enunciated in sub-section 4 of section 5 for distinguishing a tenant from a tenure-holder will not be of much use. Evidence as to the nature of the right of tenancy as originally acquired, will generally be very meagre. Enquiry on this head will generally be unsatisfactory from the nature of things.

This sub-section is objectionable also on other grounds. It indirectly gives authority not only to non occupancy ryots to sub-let their lands, but even to tenants who are not ryots to do the same. Although the present Bill does not intend to give rights of occupancy to tenants holding only pasture and such other lands, yet there is just a chance left for such a tenant to convert himself into a tenure holder and thus secure a position above an occupancy ryot if he can obtain a holding of more than 100 bighas and then sub-let the whole or a part of this holding.

The creation of a new class of tenure-holders from out of tenants holding more than 100 Biggas will be productive of great mischief. It will bring in a state of things wholly unknown in the country and without any advantage being secured to the zemindar—it will encroach upon his rights and privileges.

In short the presumption is not at all a fair one. It gives an undue advantage even to ryots who have no rights of occupancy and to other tenants who have so long been recognised as tenants at will.

Section 11. of the rent Commissioners Bill had embodied a most objectionable provision by which a new class of tenure holders were created for the country and though that provision was left out in the Bill of 1883 yet the present Bill again indirectly reproduced it only in a modified though not in a less objectionable form.

CHAPTER III.

SECS. 6 TO 22.

TENURE-HOLDERS.

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ENHANCEMENT OF RENT.

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There is a class of tenure-holders to be found in some parts of East Bengal whose tenures are of a peculiar nature. From time to time various permanently settled estates were put up to sale for arrears of revenue and purchased by Government. When the Government took possession of these estates it found that there were some tenure holders in the mehal whose tenures did not date so far back as the permanent settlement but had been created subsequent to that date. In some cases Government collected the rents of the mehal under khas management for sometime and then having made surveys and assessments let out the lands to the tenure-holders for a definite term at a Jumma far above their original rent. The jumma put upon these tenures was generally based upon the gross assets making an allowance of Rs. 10 per cent as collection charges and Rs 10 per cent as malikana to the tenure-holders. In other cases the tenure-holders were never dispossessed but settlement was made with them on the above principle after survey and assessment. These settlements were renewed from time to time though not at rents adjusted at the time of the first settlement. Subsequently these khas mehals were sold by Government at public auction and were purchased by persons other than the tenure-holders. These purchasers evicted or tried to evict the aforesaid tenure-holders. The litigation that followed these acts or attempts has generally been decided in favor of the tenure-holders. The High Court has generally held that these tenure-holders have by the above mentioned indulgence of the Government got a status in the mehal and that though they could have been altogether ousted by the Government as auction purchaser at a Revenue sale, yet they having been retained in possession or subsequently put into possession of their tenures at an enhanced rent, their tenures have not been avoided altogether but that they have permanent tenures with variable rents. When the Government made settlement with these tenure-holders it did not make any contract as to the principle on which their rents were to be assessed in future ; it simply made arangements for a definite term which were to come to an end after the determination of the prescribed period. There have also been cases in which no allowance was made to tenures-holders expressly by the name of *malikana*. In both these classes of cases difficult questions often arise as to the rate of rent payable by them to the subsequent purchasers of the mehal and as to the rate to which their rents are liable to enhancement. Formerly section 8 of Reg. 5 of 1812, now repealed, which provided the allowance of 10 per cent as profit to such tenure-holders together with a reasonable allowance for collection charges covered the cases of such tenure-holders. The existing law has no definite provision bearing on such cases. At the present time the Courts generally decree enhancement to the full extent allowing the tenure-holders collection charges at the rate allowed by Government as also the extra allowance received either as malikana or by any other name.

It is submitted that the present Bill does not make any definite provision to cover such cases but leaves the law in the same indefinite state that it has been in since the repeal of the above mentioned Regulation V of 1812. When distinct provision is intended to be made in the present Bill to cover all possible cases of enhancement in respect of all classes of tenures, it is submitted that clear provisions like those in Reg V. of 1812 should be enacted so as to cover all conceivable cases. It is very doutful whether sec. 7 of the present Bill will properly and adequately meet such an object. The word customary used in Sec. 7 will be a fruitful source of great difficulty to the landlord. The same difficulties that have to be met with and surmounted in proving a custom will stare the landlord in the face when a customary rate will have to be proved.

Sub-section 3 of Sec. 7 should fix a maximum limit of profit that may be allowed to tenure holders. The maximum limit of profit at 30 per cent under sub-section 3 of sec 21 of the Bill of 1883 was rather hard on the landlord. Clause C of sub-section 3 of sec. 7 which requires the Courts to regard the "risks of Collection" to be incurred by the tenure holders, adds only an item of indefiniteness with regard to the adjustment of their rents. Such vague expressions are productive of no good but of contentions most difficult to be satisfactorily dealt with. When the landlords cannot expect to claim any indulgence with respect to the stringent provisions of the sunset law even when the source of their income is stopped either by flood or famine, or by drought or agrarian disturbance, when no considerations are made by Government towards them on the ground of " risks of collection " although admittedly no facilities have yet been given to the landlords to collect their rents, why then should such considerations be shown to mere middleman who are neither *bonafide* cultivators nor proprietors of land.

Sub-section 4 is not based on fair principle. " Fair and equitable rent" in such a case is an indefinite expression. In the cases contemplated by this sub-section, the rent to be calculated should be the

rent payable by ordinary or at most occupancy ryots to a tenure holder for similar lands with similar advantages in the vicinity. Sections 8, 9 and 10, which limit enhancement to double the amount of the rent previously paid vesting the Court with a discretion to allow a period of 5 years for the full fruition, by yearly instalments to be settled by the court, of an enhancement decree and further imposes a period of ten years as the shortest interval between any two consecutive suits for enhancement, are very objectionable as general propositions meant to govern all cases and all classes of tenure holders. Why these middlemen tenants should have these indulgences is not very clear. These restrictions on enhancement, even if they can be defended with some show of reason and fairness in the case of occupancy ryots, can hardly be defended when applied to the cases of tenure holders. The tenure holders as a rule collect the rent from their tenants and make a profit out of these collections. Nobody grudges to allow them to have that profit but why should they be allowed to retain by way of right an extra sum, simply because the landlord did not keep their rent always running in the highest level attainable. Why should the landlord suffer because he allowed the tenure-holder to hold over for some time at a very low rate of rent. There is no hardship in the case of these tenure-holders at all, if they are asked to pay up the landlord's just share after full allowance is made for their share of the profit. Why then should there be a gradual increase in their case. As these provisions restricting the limit of enhancement of tenure holders' rent have been embodied in the sections relating the enhancement of the rent of occupancy ryots, with this difference only that the latter restrictions are more stringent, it is submitted that the remarks that will be made under those sections against the general principle of these limitations, may be taken into consideration in deciding the justness or otherwise of the restrictions imposed by these sections on the enhancement of rent of the tenure-holders. At least an exception should be provided to sections 8, 9 and 10 in the case of such tenure-holders as have been mentioned above and also in the case of those that hold their tenures under a contract which allows them only a prescribed per centage on the gross collections. In the case of such tenure-holders it would be most unjust to curtail the right of the landlord to the full assesment simply because he has been very indulgent and neglected to trouble the tenure-holders every now and then by insisting rigorously on his strict legal rights. No such exception is asked to be made in favour of persons whom the Bill will directly convert into tenure-holders or who just stand a chance of an elevation to that class under the gradual operation of the Bill when past into law..

There is nothing objectionable in section 11 when applied to these tenures which are recognized at the present day as permanent and transferable. But if the Legislature means to classify tenants who hold more than 100 bighas of any kind of land for any purpose and who have been subletting the whole or a part of those lands, as tenure holders and promote other classes of tenants to these grade, it is submitted that then the provision contained in this section relating to the general power of sale, gift and mortgage given to all permanent tenure-holders is most objectionable.

Again tenures which are only heritable but not transferable are rare in the country. There are also very old tenures which by the conditions of the contract creating them are not trasferable Even these tenures are made transferable by one sweeping provision contained in this section 11 and the condition of non-transferability which was embodied in the contract say even 20 years before this Bill was made is swept away and made illegal by section 12.

The unfairness of these provisions is apparent. If the landlord knew that he would not be able to make such a contract to protect himself very likely he would not have created such a tenure at all. To make such conditions in a pre-existent contract null and avoid and to take the landlords by surprise and to cut off the reversion of the tenure to the landlord on failure of heirs by allowing the last owner to transfer the tenure against the implied or even the express conditions of contract creating it can hardly be said to be just. It is not unknown that when at the time of the creation of a tenure heritability only is given or a restriction is imposed on its transferability the landlord forsakes a part of the bonus which he would otherwise be entitled to in full. Under such circumstances to secure to the middleman a right for which he did not pay and which the landlord would not have yeilded even for a consideration must be said to be subversive of his proprietory right.

The phrase "a condition *consistent* with the provisions of this Act" used in section 12 will be productive of misapprehension and dispute. The Bill does not and cannot give an outline of the principles which may guide the court to determine what conditions are *consistent* with its provisions. It is doubtful whether such conditions as are not forbidden by the Bill can be said to be *consistent* with its provisions.

Again, the wording of the section is such, that the onus of showing that a particular condition, solemnly agreed upon by the tenant, is consistent with the provisions of the Bill, appears to be very unfairly thrown upon the landlord. The just and fair principle is that where an admitted condition is sought to be nullified as being illegal the party who wants to get over such condition on such plea should substantiate it.

As to the consistency or otherwise of a condition with the provisions of the Bill take the following instance :—A Hindu landlord creates a tenure in favor of a Mehamedan tenant and it is provided that no cow should be killed or allowed to be killed on the land and that in case of a breach of this condition the tenure-holder will be liable to ejectment. What is to be said of such a condition? Is is consistent with the provisions of the Bill?

With reference to the above, it would be proper to consider the effect of clause a. of section 31 and clause b. of section 58 Both these clauses allow the tenant to use the land as he pleases, provided he does not by any of his acts render it unfit for the purposes of the tenancy. Now slaughtering cows can never be said to render the land unfit for tenancy; rather on the contrary it may be argued that the blood and bones of the animal acting as manure on the soil would improve the land and render it the more fitted for cultivation. But such an act would not only be most repugnant to the feelings of a Hindu landlord but would according to the tenets of his religion make him liable to expiation. And yet such a condition may not be deemed to be *consistent* with the provisions of the Bill.

To curtail the freedom of contracts and the means of enforcing them by such vague expressions leaving the parties to grope in the dark is anything but fair. The general principles of the law of contract and the valuable rights and privileges of the landlord should not be hedged and fettered in the anxiety to protect the interests of the tenants,

The above remarks apply with greater force in the case of ryots and therefore it is submitted that the phrase above alluded to which has been used in section 12 as well as in clause b of section 23, clause ii of section 31 and clause. b of section 58 may be so modified as to make a condition void only when the same is expressly forbidden by the provisions of the Bill.

While on the subject of private contracts, it is proper to state here once for all, that the present Bill has in many places embodied provisions which giving retrospective effect to its stringent clauses sets at naught legal and fair contracts of long standing. This is not only unjust and unfair in general but is in the present case fraught with positive mischief, in that the application of new provisions with a retrospect ve effect to the old state of things would deprive the land-lord of his vested legal rights and privileges without substituting any adequate return for their loss.

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REGISTRATION OF TRANSFER OF TENURES.

Secs. 15 to 22.

Although there seems to be no substantive provisions for the registration of the transfer of shares of tenures in the above sections, yet section 21 assumes the registration of the transfer of shares and thereby indirectly authorises their registration. But at the same time there is no saving clause as is found in Act VIII of 1869 under which the Zemindar is not bound to recognise any division of the rent of a tenure. This omission is likely to create difficulties and raise vexed questions. On the other hand, Sec. 18 may be said to provide indirectly that when a transfer even of a share is registered the landlord will have to look to the transferee only for the due payment of the rent of that share. It is very likely that the present Bill means only to compel the landlord to recognise the transfer of the entire tenure as far as the rent question is concerned. But without the above mentioned saving clause there remains room for a doubt. And in these matters the room for a doubt is always objectionable. While on the subject of the registration of transfer of tenures, it may not be out of place to make some observation on the definition of the word transfer. The word "Transfer" in the present Bill is defined to *include* sale, mortgage, and gift. But transfer as defined in the Transfer of Property Act has a wider meaning; it includes under that Act also leases. The present definition is therefore ambiguous. It does not limit the meaning to sale, mortgage and gift only and therefore may be said not to exclude leases. It would be better to do away altogether with the word transfer from the Bill or to define it so that it may only mean sale—voluntary or by court and gift. If it be allowed to include also mortgage, then the use of the word in the sections relating registration of tenures would not only compel the landlord to register even simple mortgages of tenures but may also create other difficulties.

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CHAPTER. IV.

This chapter is very objectionable. It creates a new class of tenure holders never recognised or even known in the country. Failure on the part of the landlord to rebut the presumption raised in favor of the ryot under sub-Sec. 2 of Sec. 64, will elevate an occupancy ryot into a tenure-holder and thus secure to him certain distinct rights and privileges not enjoyed by other occupancy ryots. This elevation will go on from time to time to the detriment of the interests of the landlord. What is the principle on which this promotion is based and what are the advantages to be

gained by the inauguration of this system and classification, it is not easy to determine. On the contrary, the ryot at a fixed rent or rate of rent will be a peculiar class of tenant. He will be a tenure-holder with respect to the transfer of and succession to the tenure but remain a ryot in all other respects such as the realisation of his rent. His holding or tenure will not be liable to summary sale and his crops will be liable to distraint. The landlord will not be entitled to claim a right of preemption in the case of transfer of his tenure. Nor will the provision contained in Sec. 35 relating to gifts apply to his tenure. Thus the status of this class of tenants will be a *bundle* of inconsistencies, and create unnecessary complications and invidious distinctions between two classes of occupancy ryots which it would be hard for the ryots themselves for whose benefit all these pains are being taken, to understand.

Sec. 23. cl. b. This clause gives an undue advantage to ryots at a fixed rent or rate of rent. It has been stated that they are merely a class of occupancy ryots. Why then should they not also be liable to ejectment for reasons mentioned in cl. i of sec. 31. If these ryots are allowed to render the lands they hold unfit for the purposes of the tenancy without any penalty for doing so—it would not only encourage them to do so to the detriment of the landlord's interest in the land but will also tempt all other ryots who have done such acts to set up false claims of holding at fixed rent. The exemption of this class of ryots from suffering the consequences of their unlawful and mischievous acts cannot be defended on any ground whatsoever.

CHAPTER V.

Occupancy Ryots.

General.

Secs. 24 to 31.

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The provisions relating to the "settled ryot," are most objectionable. They make very many novel encroachments on the rights of the landlord. It has often been said by high authorities that Act X of 1859 by creating a class of tenants under the name of occupancy ryots had invaded the then recognised rights of the landlord. Yet compared with these provisions it can safely be said that the injury done by Act X of 1859 is indeed very small.

(1.) Under Act X of 1859 the payment of rent was a condition inseperable from the acquisition and maintenance of the right of occupancy. The present provisions ignore altogether the necessity of such a condition.

(2.) Act X of 1859 gave right only to the specific land which had been held or cultivated by the ryot for a period of 12 years continuously. The "settled ryot" of the present Bill is required only to have held some land or other in a particular village or estate for a period of 12 years and then he is endowed with a peculiar attribute on account of which he is capable of creating a right of occupancy in his favor in every piece of land that he may get hold of either of, the same village, or of the same estate.

(3.) Sec. 7 of Act X of 1859 saved the terms of written contract against the acquisition of a right of occupancy. But sec. 210 of the present Bill by one sweeping clause (cl. a) nullifies all such contracts i. e. makes all conditions against the acquisition of a right of occupancy void *ab initio*.

(4.) Under Act X of 1859 it was the ryot who had to prove that he had acquired a right of occupancy. The present Bill, on the contrary, creates a presumption in favor of the ryot, which it will be for the landlord to rebut, or in other words, it will be for the landlord to prove in every case in which any ryot may choose to set up the plea of an occupancy right, that the ryot has *not* been holding the land in question or any part of it for 12 years. This is undoubtedly a preposterous proposition. It sets all the principles of the law of evidence at naught, imposes the burden of proving a negative on the shoulders of the landlord and allows the person who alone is capable of showing most satisfactorily how he has made up the required 12 years, to remain at ease and requires the landlord who may be an auction purchaser of a few years' standing and therefore quite incapable of hunting out the antecedents of a particular tenant before he came in contact with him, to ferret out and disclose the past life and career of his opponent tenant. The failure to prove such an absurd item is inevitable—and the result is that every ryot who may choose to call himself a settled ryot is likely to succeed in obtaining a verdict in his favor.

It is not easy to determine what object will be gained by this half and half measure, how it will "tend to simplify litigation"—and what are the state of things in the Lower Provinces the existence of which warrants such a presumption. The presumption does not cover the whole ground of the acquisition of the right of occupancy as enunciated in the present Bill. The plea of the ryot may be that although he has not held the specific plot or any part of it continuously for a period of 12 years yet he is a settled ryot of the village or the estate the land of which may be in dispute. In such a case the presumption is worse than useless.

(5) Act X of 1859 never allowed a ryot who had left his holding without making any arrangement for the payment of its rent to come back and claim the same at any time within 3 years. The courts from the time he left the same have aways looked upon such acts as amounting to abandonment or relinquishment of the holding. The present Bill not only allows the ryot to get back into possession even in such cases (Sec. 96) and not only causes a substantial loss to the landlord in such cases but allows the ryot even to count the period of his absence to make up his 12 years.

The following illustrations will show the justness of the above remarks.

First take the case of a settled ryot. On the 5th of Baisakh, a settled ryot of village A but who resides on the land of a different landlord in village B leaves his holding in village A and ceases to cultivate the same. For almost one year *i e* down to the close of the current agricultural year the landlord *must* wait and see what the ryot means to do. He cannot enter upon the land and let it out to anybody else or bring it into cultivation himself. Then arises the question whether the landlord can even after the close of the current agricultural year let out the land in the above case Sec. 96 says that the landlord can do it when the ryot has voluntarily abandoned his *residence* and has ceased to cultivate the land. In the case supposed the ryot has not abandoned his residence at all. He is still residing where he was. How can Sec. 96 then cover such a case. Taking for granted that this section covers also such a case the landlord was to go to the expense and trouble of publishing the notice required by Sub-sec. 2 of Sec. 96 which there is no body to repay. The years rent also is well nigh lost. If the former ryot had cultivated the land the rent might have been realised by distraint. After the abandonment and after it has been let out to another ryot the holding cannot be sold for the arrears.

Take another case.

The landlord, enters upon the land and lets it to a third party and publishes the required notice The ryot does not stir for about two years and then files suit. The landlord having been very much annoyed contests the suit and more than a year and very likely two years elapse before the case is finally decided. So by the time the ryot recovers possession by executing the decree five years elapse from the time the ryot left. The landlord has to remain in suspense for 3 years and then give up the land and pay the costs of the suit in the bargain.

Then again, the fact that the ryot will be able to recover back his land if he should sue within 3 years and the chance of any new ryot, who might be inducted on the land and who would surely be dragged into the suit against the landlord, losing his labour and costs of cultivation not to mention costs of suit, will all conspire to keep away all right thinking people from taking lease of and cultivating such lands and thus the landlord will be left either to cultivate the land himself or to let it remain fallow and without any return.

As Sec. 96 has been referred to it would not be out of place to state here that Sub-sec. 7 of Sec. 26 coupled with Sec. 96 will give even to the non occoupation ryot a right to remain away from the land for a year and a half before he makes up his mind as to whether he should sue to regain the possession of the land, which he under no circumstances should be allowed to do. Why should he even be allowed to sue for possession after having voluntarily abandoned his holding and why should the landlord wait for one year for his return without having been paid the rent in advance ; and lastly why should he be allowed to count this period of his *neglect* to till the soil to complete his 12 years. Can there be anything more unjust and one sided than this provision which brings about a result so disastrous to the landlord.

RESTRICTIONS ON TRANSFER.

So much has been said on this question from time to time by representatives of both the landlords and the ryots interest that the question may be said to have been argued threadbare and any attempt to put forward any further augument would be a more repetition. Yet as some of the restrictions proposed by the bill of 1883 have been omitted from the present bill it has become necessary to say some thing with regard to matters of detail.

Under the original Bill of 1883 the landlord had a right to buy up at a fair price the holding even in the case of bequest when the bequest was in favor of a person other than the legal heir (section 56 of the Bill of 1883.)

Again when the ryot made a gift of his holding in favor of a person other than the landlord, the landlord had a right under the Bill of 1883 (section 54) to buy it up if he chose at a price to be fixed by the court.

These restrictions have now been done away with. It is submitted that it would be most prejudicial to the interests of the landlord if no right be reserved to him to annul, transfer or buy up holding in cases of bequests or gifts made to persons other than heirs.

The effect of allowing transfer of occupancy rights to take place unreservedly has been so disastrous

in the Sonthal Pergunnahs (vide Resolution on the Administration of Civil Justice in the Sonthal Pergunnas ; Calcutta Gazette July 23 1884) that no argument is needed to be able to see clearly what the consequences would be in Bengal, were such practice legalised.

Section 35 of the present Bill reproduces, with some minor alterations, the provision of section 54 of the original Bill regarding the service of notice on the landlord after registration of the deed of gift. Of what use will this provision be if there remain no clause under which the landlord may object and claim to annul the gift or purchase the holding. The meaning and object of sub-section 4 of section 35 is not clear.

RESTRICTIONS ON SUBLETTING.

Section 37 of the present Bill has been framed with the object of restraining (1) non agricultural classes from buying up occupancy rights and (2) subletting by occupancy ryots. In order to gain the above object it has been provided that when an occupancy ryot will sublet more than half of his holding he will be converted into a tenure holder. Not a tenure holder out and out, but one having some incidents of a tenure proper attached to his tenure.

The first question is whether the status of a tenureholder is so disadvantageous as to deter the nonagriculturist from buying up any occupancy holding and secondly to deter the occupancy ryot from subletting

The only disadvantage threatened is the liability of the holding to summary sale for arrears. Now is it a disadvantage at all. If it is, all permanent tenures are liable to this disadvantage. An ostensible advantage of a summary sale to the landlord is the saving of a little time. An occupancy right is made saleable under a decree of a court. In case it is converted into a tenure it will be liable to be sold on a simple petition. But if the tenure holder contests the demand the collector will have to raise issues and decide the question as much as the civil court would have to do in case of a suit (section 198.) The ryot has an advantage under the summary procedure He is not harrassed so much under this as by a civil suit. His cost is much less than what he has to incur in the civil court. And lastly whether he defends or not the ryot is liable to the landlord for much less cost in case of sale by the Collector than in the case of a sale by the civil court. All these are advantages to be gained by the ryot in case of a summary sale. What then is the fear which is likely to deter non-agriculturists from buying occupancy rights or occupancy ryots from subletting

The proposed conversion of a ryot into a tenure holder is advantageous to him in more ways than one.

(1) He is no longer liable to distraint for rent.

(2) He can be ejected for having used the land in a manner which renders it unfit for the purposes of the tenancy.

(3) He can transfer his tenure without having to take the trouble of observing the preliminaries provided by section 32 and without any apprehension of any claim to preemption by the landlord which enhances the value of his tenure as it ensures security to the purchaser. From the above it will be clearly seen that Sec. 37 instead of gaining the object and acting as a deterrent, will on the contrary encourage subletting and purchases by non-agriculturists which the bill proposes to guard against.

Instead of such imaginary checks if it were simply provided that in cases of subletting by occupancy ryots after March 1883, the portion so sublet was to revert to the landlord and that the relationship of landlord and tenant between such sub lessee and his lessor should cease, except in the cases mentioned in clause, (a) of Sec. 37, it should stop subletting altogether and effectually check non-agriculturists from buying up occupancy rights.

That the restriction provided by Section 37 will be altogether an unworkable provision is apparent on the face of it. It is provided that the holding is to be deemed to be a tenure when it has been so registered under any Act that may be passed for the purpose. Now the question will be whose duty or interest it will be to have the tenure registered The landlord does not gain any thing by the conversion, rather looses some of his rights. Hence it will never be his interest to have it registered. If the conversion be deemed disadvantageous by the ryot he would not do it. The sub lessee no doubt has a prospective hope of acquiring a right of occupancy. But being under the influence of the occupancy ryot and standing the chance of being ejected and troubled by his lessor, he would not, before the perfection of his title, take the trouble and bear the expense of having his lessor converted into a tenure holder.

Then again various questions will arise in order to determine whether the ryot has sublet more than half of his holding. An occupancy ryot may have more than one holding. He may be taking lands from time to time and subletting parts of the same. So that the quantity of land which represented more than half the holding in any given year might be under that proportion the next year. In this way cases might arise where it would be a matter of considerable difficulty to determine the period of time at which the line ought to be drawn to find out whether more than half the holding has been sublet.

Often and often have hopes been held out to the landlords that facilities would be given them to enhance the rent of the occupancy ryots to a fair and equitable rate, which, on account of the unworkable nature of the provisions of Act X of 1859, they (the landlords) have not been able to obtain. When the Honble Mr. Ilbert introduced the first bill in Council, he said "that the two main objects at which our legislation should aim are :—1st to give reasonable security to the tenant in the occupation and enjoyment of his land ; and 2ndly, to give reasonable facilities to the landlord for the settlement and recovery of his rent."

He also said, in another place, that "Act X of 1859 was a useful and beneficial Act, and if, as must be admitted, its working has not been successful on some important points, this failure is attributable not to any defect in the fundamental principles on which the Act was based, but mainly to defects of language and expression."

The Select Committee, to whom the Bill introduced by the Honble Mr. Ilbert was referred and who have taken the trouble of revising and recasting it in the present shape, also say in para 31 of their report that "as regards enhancement by suit our object has been while laying down rules which will be substantially just to both landlords and tenants, to device a system which would avoid those elaborate and difficult enquiries, the necessity for which has made the present enhancement law an almost useless instrument in the hands of landlords."

Now the questions for consideration are.

1st. Are the provisions contained in the present Bill substantially just both to landlords and tenants ?

2ndly. Has the present Bill removed those obstacles and difficulties in the way of getting a fair and equitable rent in any way or to any extent ?

The present Bill deals with the subject of enhancement under two heads, viz, 1st Enhancement by private contract, 2nd. Enhancement by suit.

The provision relating to the enhancement of rent by private contract is a novel one and has no place in the existing law. No such suggestion appears to have been made in the Bill prepared by the Rent Commission. It is submitted that neither the wisdom nor the policy of this addition is at all clear. The ryot having a right of occupancy has a fixed tenure. It is admitted both by the Bengal Government and the Government of India that the ryots having rights of occupancy are far more numerous than those that have it not. It cannot be denied that the position of the ryots having occupancy rights is far more strong at the present day than it was even ten years before. Nor can it be denied that such ryots know and understand the privileges and security of their position better at the present day than they did even ten years before. Nor can any body ignore the fact that the occupancy ryot of to-day wields greater powers to check the landlord's arbitrary acts than the latter has to harass the tenants. Nor does it admit of any doubt that the ryot of the present time is far more able than the landlord to dictate and enforce his own terms. The agrarian disturbances that have of late taken place in different parts of East Bengal show most unmistakeably the spirit of combination which the ryots possess and which they can and do use with impunity against their landlords. Under such circumstances can it for a moment be conceived that the ryots will be imposed upon or forced to enter into any contract by undue influence ? Why then these limitations as are provided by section 41 of the Bill upon private contracts ? Terms of a private contract are based upon and determined by the nature of the supply and demand or the likelihood or otherwise of losing something more in any other way than what is given up by private contract. No such circumstances exist in the case of an occupancy ryot. He cannot be ousted even if he would not accept the terms proposed by his landlord. His rent cannot be enhanced theoretically even to any thing beyond what is fair and equitable. After subjecting oneself to the delay, trouble, vexation and costs of a lengthy litigation involving "elaborate and difficult enquiries", one has only one to hundred chances of coming out successful in an enhancement case. What reason has the occupancy ryot to fear the landlord, what the risk or necessity which is likely to induce the occupancy ryot to enter into a contract so prejudicial to his interest as requiring the active intervention of the legislature to impose so many restrictions and limitations upon private contract for the settlement of rent ? An occupancy ryot is not more helpless than a *purdanaseen* lady, nor is he a more likely person to be unduly influenced than is a debtor by his creditor. Nor does he stand the chance of being more decieved than a ward, who has lately arrived at majority, by his guardian. Nor is his relationship with his landlord one of greater active confidence than that of a client to his attorney. And yet the general principles of the law of contract are deemed sufficiently protective of the interests of such and like other persons. And then why cannot a ryot be left to avoid and annul any agreement which he may have entered into under mistake, misrepresentation, fraud, coercion or undue influence. And then why should there be a special legislation in favour of occupancy

ryots as a class imposing stringent restrictions and limitations upon private contracts. The restrictions and limitations put upon private contracts at enhanced rates will undoubtedly drive the landlord to a suit for enhancement even in cases where he might have amicably settled the matter out of court. Take the instance of enhancement on the ground of prevailing rates. Even with the restrictions made by the Bill on this head, the landlord is entitled to get 50 percent increase by a suit. But by a private contract he cannot get more than 25 per. cent. Take another instance ; the landlord is entitled to the full benefit of the increase caused by improvements made at his cost or agency and a court of law will decree him that. But if he were to make a private contract relating this very matter, he could not secure more than 25 per. cent over the rent previously paid to him. It is, therefore, submitted that such a provision, which necessarily drives the landlord to seek the assistance of the law court because he cannot amicably settle the matter out of it, however much he and his tenant may be desirous of doing it, is a most dangerous provision subversive of all amity and good feeling between the landlord and tenant.

That these restrictions and limitations are altogether onesided and forged only in the interests of the tenants and cannot be said to be "substantially just to both landlords and tenants," is evident. That these instead of facilitating the settlement of rent will increase litigation and set class against class is also clear. These, in short, will discourage all contracts and bar all private settlement of rent. On the face of the restrictions and limitations imposed upon enhancement by suit, the chance of getting a private settlement of rent at enhanced rates is nil. The ryot knowing full well how matters stand and counting his chances in a court of law, would be the last person to enter into a contract prejudicial to his own interests. If over and above this difficulty there be further restrictions and limitations put upon private contracts, what the fate of the landlord will be can be better imagined than described. When a maximum limit is fixed by law regarding anything, it is not possible except in exceptional cases to obtain it. The restrictions and limitations imposed upon enhancement by contract will be obnoxious in another way. These will have a tendency to induce the tenants either to go to courts to avoid and annul the engagements they may have made or to dispute their validity, when they may be put forward against them. Thus litigation ruinous to both parties and the question as to what was the rent before the contract was made, will open a fresh field of enquiry for the court and a fresh source of trouble for the landlord in these cases. These restrictions will handicap the landlord and curtail his right of property without any adequate advantage being secured to him in any way and will give an undue preference to the fancied interests of the tenants to the prejudice of the just rights of landlords.

The duty imposed by subsection 2 of section 41 on the registering officer of "ascertaining that the contract is in accordance with the provisions of the Act' is one of the most unworkable and objectionable provisions of the Bill. It presupposes that the registering officer is fully conversant with the details of the Bill and is also aware of the various customs, which have not been abolished by it and which in many particulars govern the relationship between the landlord and tenant. It entails an enquiry into the state, conditions and rent of the holding before the contract was made. What time and trouble such an enquiry will cost, it is impossible at present even to imagine. Although clause (c) of Section 54 provides that certain rules will be made for the guidance of officers registering contracts under Sections 41 and 42, but it is submitted that the rules however wisely and definitely drawn out will scarcely be able to get over the complications which will necessarily arise out of the provision above-mentioned. Much less will they be able to ensure saving of time and trouble.

The revised section is no improvement on the section which it remodels. The select Committee say that they have expunged the provision, by which the registering officer was required to satisfy himself that the contract was fair and equitable and that now he will have *merely* to satisfy himself that it is in accordance with the provisions of the Act. It is submitted that this change does not, in the least, lessen the work or responsibility of the registering officer. The present provision not only fully covers all that the registering officer would have had to do if the former wording had been retained, but also something more. The present expression is as vague and indefinite as the one expunged. This provision gives the registering officer a final power and authority of deciding the question as to whether a certain condition is or is not in accordance with the provisions of the Bill. Such a power would not even be allowed to the Civil Courts of first instance, if the matter were to come judicially before them. Whether the decision of the registering officer on this subject is to have any effect in the Civil Courts, where the whole question may be fully re-opened, is not settled or known. If the Civil Courts will have power to enter into the whole question afresh, then what is the good of encumbering the registering officer with these details and such duties. The provision virtually leaves the matter of registration entirely to the discretion or caprice of the registering officer. No provision even for appeals against his decision has been embodied in the Bill.

Section 42 is not only objectionable in the interests of the landlord but also in the interests of the ryot. The restrictions hereby put to the settlement of rent on new lands taken by the settled ryot will preclude landlords from letting the same to him. And this will not only eventually deteriorate the value of lands, but will also lessen the chances of the settled ryots getting new land although in great need for the same. It is inexpedient therefore to curtail the power of the landlord in letting out such lands by private contract.

ENHANCEMENT OF RENT

BY SUIT.

Then as to the provisions relating to enhancement by suit, it is submitted that the provisions of the present Bill though they are more definite in some respects both as regards the grounds and the limits of enhancement than the provisions of the present law, seem to secure this wherever it has been attained, at the landlord's expense. In other respects the provisions of the present Bill are as indefinite as those of the present law. In some cases "elaborate and difficult enquiries" under Act X of 1859 and the present law so reproachfully spoken of remain substantially the same with only a change as to the mode and process of investigation. Clause (a) of section 43 is the same as clause (1) of section 18 of Act VIII of 1869 (B. C.) Instead of the words "same class of ryots" the general name of " occupancy ryots " has been used. This is the only improvement by way of definiteness. All other vexed questions which arise and require determination now under clause (1) of the present law will also arise and have to be determined under clause (a) of section 43. What is to be deemed the prevailing rate in each particular locality is one of the most difficult of questions. How far the preparation of a table of rates by the revenue officers as provided for by Chapter XI of the Bill would solve the difficulty and how far it would be fair and equitable to depend upon such table of rates for determining the question in each particular case will be discussed hereafter in its proper place. Suffice it to say here that the difficulty will remain the same, if not knocked on the head arbitrarily by enforcing a strict adherence to the tables prepared which it would be hardly fair and equitable to do.

The determination of the question as to whether the land, the rent of which is sought to be enhanced, is of a similar description and possesses similar advantages with those lands, the rate of rent of which is put forward in evidence for comparison, remains encircled with the same difficulties. Hence as far as this clause is concerned, no facility whatever has been granted to the landlord for the adjustment of his rent.

Clause (2) of the present law for enhancement has been subdivided into three heads and placed under clauses (b), (c) and (d) of section 43 of the present Bill. Under the existing law the increase in the value of the produce of the land is the most important ground of enhancement and this is a ground which is susceptible of distinct proof and substantiation. It allows the landlord a reasonable, fair and equitable share of the profit made by the ryot in each particular piece of land. The elimination of the word ' value ' from the present clause and the substitution of the word ' price ' for it is no doubt more accurate and definite. In other respects clause (b) of section 43, which is put in the place of this portion of clause (2) of the present law is not only no improvement on the existing provision, rather on the contrary it curtails the landlord's right to enhancement and makes it dependant on the rise of the price of *staple food crops* only. The select committee in para 33 of their report say "that the price-lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute ; and our intention is that the price-lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England." It may be that the price of all other crops has a certain relation and bears a certain proportion to the rise or fall in the price of food crops. But it is not always true that the rise or fall in the price of food crops regulates the rise or fall in the price of other crops. It is therefore neither safe nor expedient to adjust the rent of lands producing crops other than staple food crops by the rise or fall in the price of food crops. Such a provision is likely to act injuriously both in the interests of the landlord as well as of the tenants. The Bill that was framed by the Rent Commissioners as well as the Tenancy Bill of 1883 provided the regulation of rent according to the prices of the staple crops. The present Bill not only ignores the custom of the country as to the adjustment of rent according to the crops grown on the soil, but even makes a new departure from the lines sketched out by those bills, and very unfairly introduces a restriction unknown and unheared of in the country. It very unjustly excludes from consideration the rise in prices of very valuable crops, whose cultivation has thoroughly and generally been established in particular tracts of the country. It indirectly brings all kinds and classes of lands, almost to the same level and makes enhancement under this clause to depend not upon the price of crops actually grown on the soil, nor upon the fitness of the lands to grow such valuable crops, but upon the general rise in prices of foodgrains to be declared staple by certain authorities. There are places, which are particularly fitted for and which do grow high priced crops , and yet if the lands of such places are not to be fairly assessed on the basis which is the only proper one, namely, the rise in prices of such crops, it cannot but be most prejudicial to the interests of the landlord. It has never been denied, but rather on the contrary it has often and often been admitted, that the principles of enhancement as enunciated in Act X of 1859, are just and fair to the landlord as well as the tenant. Why then is that old principle of regulating the rent of the land according to increase in price of the produce of it to be narrowed and limited to the rise in the price of some particular crops. It is

submitted that the principle underlying the proposed provision of this clause is not only unfair but also erroneous. If this encroachment on the rights of the landlord and the tenant to have their rent adjusted according to the price of the crops sown on the soil has been made on the ground of a supposed facility for determination of the rise in the price of any particular crop, afforded by the preparation of price-lists of staple food crops, it is submitted that such price-lists can as well be made of all or at best the principal crops that are usually sown in a particular locality, and the question as to the price of which of such principle crops is to be taken into consideration in regulating the rent of any particular plot of land may safely be left to the consideration of the courts in each particular case.

Clause (c) of section 43 is also faulty and onesided. Under the existing law and so it was under the old, the ryot is liable to enhancement when the productive powers of the land have increased otherwise than by his agency. The provision under this head has been divided into two parts in the present Bill, viz, improvement by or at the expense of the landlord, clause (c), and by fluvial action, clause (d). These two heads have been made to exhaust, though they really cannot exhaust, the existing provision. These two clauses do not at all touch the case, where the increase in the productive powers has been effected by the joint ageney of the landlord and the tenant. That there are numerous cases of this description no one will deny. Not only did the Bill prepared by the Rent Commissioners, but even the Bill of 1883 did provide by subsection (2) of section 74 and by clause (b) of section 75 for such a case and made a fair provision to govern it. That provision, though embodied in a different form in clause (b) of section 134 relating to the table of rates, yet does not find a place in the general principles enunciated by section 43. This is objectionable and is prejudicial to the interests of the landlord.

Then again there are and may be cases, where the productive powers of the land have increased neither by the agency of the landlord, nor by that of the tenant, or by the joint agency of both and not even by fluvial action. Section 43 does not make provision for such cases. Clause (c) of section 134 partly covers such a case. The existing law covers such a case by the simple qualifying phrase "otherwise than by the agency or at the expense of the ryot." A principle which would cover such a case, should find a place in section 43. As an illustration of such a case take the instance of a canal cut by Government. It was not for purposes of irrigation, in which case a tax would have been paid either by the landlord or by the tenant for the use of its water. This canal may however increase the productive powers of the land even without flooding the adjacent places. Why should not the landlord reap the benefit of such improvement equally with the tenant.

Under the existing law the landlord can enhance, where there has been an increase in the value of the produce otherwise than by the agency or at the expense of the ryot. This ground cannot be said to be fully covered by the ground embodied in clause (b) of section 43, viz, a rise in the average prices of staple food crops. The landlord may estabtish a market near the tenant's land or may cut a canal or open a way from the tenant's village to the nearest market, and thereby cause an increase in the value of the produce of the specific land without there being any general rise in the average price of the staple food crops in the market. Such a case cannot also be said to be covered by clause (c). It does not actually increase the productive powers of the land. As it is not only a possible but a likely case, it should have a place in the general principles of enhancement. It is hoped that it will appear from the above that there has not been any improvement made by the present Bill on the existing law as far as the principles of enhancement are concerned, and that the proposed changes are detrimental to the interests of the landlord and in curtailment of his recognised rights. The present Bill has, in short, merely tried to narrow the application of the existing principles and that only in the interests of the ryot.

See 44. Clause (a) is a new provision inconsistent with the custom of the country and the associations of the people. It is unfair in principle and inexpedient in policy. In olden times the prevailing or customary rate was the general standard of enhancement. No limitation as the one proposed by the Bill was placed on enhancement by Act X of 1859, nor since the passing of it. No such restriction was suggested by the Rent Commissioners, nor by the Bill of 1883. The proposed change punishes the landlord for his indulgence towards his ryots. One of his rights is curtailed because he allowed some of his ryots to hold much below the prevailing rate at a time probably when inclemency on the part of the landlord would cause their ruin. If the prevailing rate of rent is at all a ground of enhancement, other circumstances remaining the same, the maximum enhanced rent ought in fairness to be allowed to come up to such rate. In support of this restriction on the old rule of enhancement the select committee say that they have not been able to adopt the proposal to limit the maximum enhanced rent to one-fifth of the average annual gross produce, in cases of enhancement on the ground of an increase in the productive powers of the land because it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops and because weighty objections have also been taken to the principle underlying that proposal. That they have accordingly struck out the

provision to the above effect contained in the original Bill. And that as a set off against this they have increased the stringency of another limitation contained in the original Bill by providing that, when rent is enhanced on the first ground. *i. e.* clause a of sec 43, the enhancement shall not amount to more than 8 ans. in the rupee (50 per cent) and that, when it is enhanced on the second or fourth of those grounds under clauses b & d of sec 43 – the enhancement shall not amount to more than 4 ans. in the rupee (25 per cent) and by providing, that the court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair and inequitable. Enhancement on the ground of increase of the productive powers of the land has always been found under the old and the existing law to be the most unworkable of all the provisions relating to enhancement, and it appears that the select committee were fully conscious of the difficulties that lie in the way of enhancement on that ground. But they say "enhancement on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of enquiry and registration provided for in the Bill, but enhancements on the ground of increase of productive powers caused by fluvial action will still be liable to the same difficulty caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in past years."

The onus in an enhancement case is heavily put upon the landlord, the least flaw in the evidence which causes the mind of the judge to waver exonerates the tenant from liability to enhancement. Rarely can a judge be satisfied of the justice of the landlord's claim in such a case. And the difficulties spoken of are the difficulties of the landlord which thus constitute the vantage ground of the tenant. Under such circumstances it is clear that the landlord has very little hope in this direction. As to the facilities of enhancement on the ground of increase of productive powers by the agency of the landlord, which, it is supposed the proposed system of enquiry and registration will afford, it is submitted that it is more theoretical than practical and that it will ultimately prove to be of doubtful good, if not altogether delusive. It is hardly fair to impose so many stringent restrictions as an insurance against the excessive flow of good from the proposed system of enquiry and registration, which at best must for some time be regarded as tentative and uncertain, when such restrictions relate to another and altogether different ground of enhancement viz. the one based upon prevailing rates so long acknowledged to be the most convenient and the most easily understood ground. If any one of the grounds of enhancement is more feasible than the others it is this ground. The ground based upon the rise in the average price of staple crops, though more definite than the third & fourth grounds, requires such enquiries relating to the past and present prices, that it is not likely to prove so easy of ascertainment as is supposed. Under such circumstances to cut down the rate of enhancement according to prevailing rates by way of set off for the protection of the ryot against any possible apprehension of hardship in case of enhancement on any other ground, is most prejudicial to the interests of the landlords. It is against all principle to impose a restriction on a particular right simply on the ground of a bare posibility of any abuse of another and a quite distinct right. In such a case if any restriction is really necessary it should be on the exercise of the latter right. As to whether there is any such necessity or not will be discussed hereafter under section 46.

The injustice and unfairness of this restriction will be apparent in the following illustration.

A holds 10 Bighas of land at 1 Re 4 ans per bigha and pays 12 Rs 8 ans yearly.

B. holds the same quantity of land of a similar description with similar advantages at the rate of 14 ans per bigha and pays 8 Rs 12 ans yearly.

C. holds a like quantity and at the rate of 1 Rupee 8 ans and pays 15 Rs yearly.

All the three are occupancy ryots.

The prevailing rate for such lands held by occupancy ryots is found to be 2 Rs per bigha. Suits are instituted for enhancement and decreed.

D. E. F &c &c are all occupancy ryots holding similar lands with similar advantages in the vicinity and all of them are paying at the rate of Rs 20 for 10 bighas. The decree cannot make A. pay more than Rs 18-12 ans yearly, B. more than Rs 13, 2 ans. and C is made to pay Rs 20.

What is the fault of the landlord in such a case and why should such an invidious distinction be made between A. B. and C. when their rent is fairly and equitably settled by a court of justice and not by a capricious and oppressive landlord.

In the above case B. cannot be made to pay even as much as C had been paying.

Then again the difference once made is likely to remain for ever and whoever by an accident got into possession of a quantity of land at an unusually low rate will reap not only the advantages of the low rate for the time being but will be entitled to enjoy the benefit of the accident at the commencement of his tenancy in the shape of immunity from a fair and equitable enhancement, whereas others who came on their lands on a high rate of rent will be required to pay higher and higher.

It may be said it would be very hard on B if he were made to pay at once Rs 20 in the place of Rs 8 12 ans. But how is it hard ? He should be grateful for the *indulgence* that he had for sometime. That indul-

gence should not be a ground of showing him further indulgence at the cost of the landlord.

Clause d is also objectionable in the general form in which it has been put. The rate of rent based upon Landlord's improvement should also be taken into consideration even in ascertaining the prevailing rate of rent in cases where the ryot whose rent is sought to be enhanced, has derived benefit from improvement. It may be said that in the case supposed the landlord would be able to enhance under clause C. But it is submitted that instead of going over the same question and the elaborate enquiry necessary under sec 46 or any other provision that may be substituted in its place,it would be shorter,safer and more reliable work if the landlord were allowed the option to have the question decided under cl a of sec 43, the expression "with similar advantages"in that clause would cover the case supposed. On the face of cl d. of sec 44 no advantage can be taken of the phrase "with similar advantages" Of course it would be prejudicial to the landlord if the restriction embodied under cl a.of sec 44 remain intact and the landlord proceed to enhance rent in the aforesaid cases of improvement under clause (a) of sec 43 instead of under (c). For in that case he does not get the benefit of the whole enhancement in those cases where the rent formerly paid is so low that when raised by 50 per cent it does not come up to the prevailing rate.

Sec 54 cl. b. The restriction imposed in the maximum amount of enhancement made on the ground of rise in the average prices by this clause viz. of 4 ans in the rupee or 25 per cent is another restriction imposed by way of a set off.

The unfairness of the principle upon which this has been based has been already stated. Enhancement on the ground of rise in the average prices has been considered by the Select Committee as one which will be the easiest of accomplishment on account of the preparation of authoritative price lists by the Local Govt. How far this will be attended with success remains to be seen. But this stringent limitation has been unjustly put upon it in anticipation of any possible advantage that the landlord might derive from this provision. Clause c. of this section is more than a sufficient check. Why should there be a further check. Why should not the landlord get proportionately. It was once before arranged that the limit should be double the amount of the former rent, now it is reduced to its one fourth on no higher ground than as a set off against a possible danger.

This curtailment is altogether a novel proposition never broached before and has no authority for its support either in practice or in theory.

Cl. a. of sec 43 gives a very wide discretion to the courts to compare the prices of the 5 years rent before the suit with any other 5 years. These other 5 years might include years of scarcity when the prices rose abnormally high from accidental causes such as flood,drought or the like,any comparison with the prices of such years will surely be most prejudicial to the interest of the landlord, and yet there is no provision limiting the discretion of the court in this respect.

Then as to the lists periodically published by the authority of the Government,the clause in question makes them conclusive evidence and yet every body knows that no great reliance ought to be placed upon those lists. The statistics are gathered in the most slip-shod fashion and there is none to check or test them. They are published as obtained. They should not therefore be made conclusive evidence of the rates of current prices for the time being.

Sec 46. The elaborate enquiry required by this section is rendered useless by one indefinite phrase put in sub clause IV of clause b of this section. The consideration of the ability of the land to bear a higher rent leaves the matter in the greatest possible uncertainty and the conditional nature of the decree as provided by cl. c. leaves an open sore for continual litigation. Where the increase in the productive powers has been caused by the sole agency of the landlord the whole benefit of the increase should go to the landlord. The tenant is not entitled to share the profits to the smallest extent. Cl. a of section 75 of the original Bill had such a provision. The same should be retained for purposes definiteness and certainty. The proposal to limit enhancement to one fifth of the average annual gross produce in such a case is most unfair and based upon no principle. The increase is merely a return for the advance made. The ryot gets his costs &c necessary for utilising the same and he is entitled to nothing more. If any share of the profit obtained by such outlay were to be allowed to the ryot it would at once discourage such improvements. Although the Select Committee did not adopt this proposal yet they very unfairly made the greatest possible concession by way of compensation for this proposal by imposing stringent restrictions on the other modes of enhancement.

Sec 47. has two restrictions and provides an enquiry indefinite and unworkable in its nature. With the restriction provided by cl. c the further limitation under b is unfair and unnecessary.

Sec 48. May be allowed to qualify only enhancements under clauses b and d of sec 43. On no account can the question as to whether the rent is fair and equitable arise where the rate to be fixed is the prevailing rate. Again in the case of enhancement on the ground of improvement by the land-lord's agency the landlord is entitled to the whole of the increase, therefore no such question arises. It is

to be declared fair and equitable by the legislature and therefore no discretion can properly vest in the Courts in such cases.

Sec. 49. The provision as to progressive enhancement may from one point of view appear to be fair—but with other restrictions it becomes most reprehensible and specially so when applied to the cases under Cl. a and c of Sec. 43. In the case of the prevailing rate being high no such concession should be made to the ryot—and in the case of improvement brought about by the land-lord no such indulgence can be shown to the ryot except at the expense of the land-lord who is entitled to the full increase. If any such concession were made to the tenant in such cases then it would be giving him a share of the profits which came into existence otherwise than by his agency. The land-lord having paid for the increase is entitled to the whole of it.

Sec. 50. 15 years interval is too long a period. If these restrictions are imposed in cases where there has been a private contract with a slight increase—it will check private contracts and draw parties to litigation, a state of things most to be avoided or it will oblige land-lords to exact the last pice from the tenant and to practise the utmost rigor in his dealings with tenants even when they are otherwise diposed to be indulgent. The above observations it is hoped will make it clear that the present provisions are in no way improvements on the existing law. The principal difficulties in working out the theory and principle of enhancement remain almost the same. Instead of one set of elaborate and difficult enquiries another set is substituted and above all the rights of the landlord as enunciated by Act 10 of 1859 and reenacted in Act 8 of 1869 are unfairly encroached upon and cut down without any adequate advantages by way of compensation. Novel checks, restrictions and limitations are imposed upon the principles of enhancement on the plea of simplicity and definiteness which however might prove wholly delusive.

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PRICE LISTS.

Cl. 5 Sec. 52.

The time of 15 days for making any objection to the price lists prepared by the Collector is very short. At least a months time should be allowed.

Cl. b. Sec. 54. The reasons why the price of crops only should not be the index for ascertaining the rent of a holding have been always put forward. It is therefore submitted that the word " food " in this clause should be struck out.

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CHAPTER VI.

NON-OCCUPANCY-RAYYATS.

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Secs. (55—61.)

Why should not a non-occupancy-ryot be liable to ejectment when the landlord requires the land bonafide for his own purposes.

Why should the expiration of the term of a lease be a ground of ejectment only in cases where the lease has been registered. Often times ryots are let into lands for a specified term under oral argeements. Why should verbal argeements be ignored altogether and the ryot exempted from ejectment on expiry of the terms of such contracts. If the rate or amount of rent payable by a non-occupancy ryot can be proved in a court by oral evidence, why should not the term of his lease also be allowed to be so proved. The last sentence of clause b. of Sec. 58 does not presuppose the existence of a *written* contract. When the breach of such a condition as under the bill entitles the landlord to eject the ryot, can be contracted for orally—why cannot the term of a lease be allowed to be contracted for like wise. The provision contained in Sec. 59 that no suit to eject a non occupancy ryot shall be instituted six months after the expiration of the term of the lease is very hard and objectionable. Regarding enhancement of the rent of a non-occupancy ryot the adjustment should have been left to competition. Instead of that he is placed by subsection 9 of Sec. 90 exactly in the same position and allowed the same advantages with an occupancy-ryot and in a better position enjoying greater advantages than a tenure holder enjoys. (See Sec. 8.)

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CHAPTER. VIII.

Sec. 64.

The objectionable nature of this presumption has been so clearly shown by high authorities that a discussion of it must necessarily involve a repetition of arguments more or less familiar. If the presumption were prejudicial to the landlord when it was first enacted in Act X of 1859 it would be more so if it were reproduced without any limitation or restriction now in 1884. To keep the twenty years a constant quantity to be calculated backwards from the date of every suit

in which a question of the fixity of rent is raised, would give the tenant an undue advantage over his landlord. If the retention of such a presumption is a foregone conclusion it is submitted that it may be restricted so as not to prejudice auction purchasers who having regard to the peculiarity of their position would be quite incapable of adducing any rebutting evidence to meet the presumption in favor of the tenant. In this class of cases it is desirable that the 20 years should be calculated back from a definite and prescribed point of time. The most unobjectionable point of time would be the date of enactment of Act X of 1859.

Sec. 66. This section applies not only to ryots but also to permanent tenure holders. It allows landlords to impose an additional rent in case of increase of the area of a tenure and entitles tenure holders to claim abatement of rent in case of decrease of area of the tenure caused by diluvion or otherwise. It does not make any distinction in this matter between tenures holders at a fixed rent and those held at a variable rent. So far the landlord and the tenant are both equally dealt with. But coupled with Cl f of Sec. 210 it becomes an unfair and an one sided provision. Cl f favors the tenant and looks to his interests only at the expense of the landlord. Sec. 210 together with Sec. 66 saves all contracts by which the landlord may have agreed not to impose any additional rent for excess lands gained by alluvion or otherwise. But it nullifies all contracts by which the tenant may have agreed not to claim any abatement or reduction of rent in case of decrease of area on account of diluvion or from other cause. Is this fair? why should not there be a mutuality in contracts? Why should one party be bound by a condition when another condition which is the consideration for the other, should be declared null and void. In all cases of tenures where ever these is a condition that there is to be no reduction of rent on account of decrease of area, there is always found a similar condition in order to counterbalance the prospective loss of the tenant by which the landlord binds himself not to claim an increase of rent for increase of area. The landlord foregoes the right only in consideration of the covenant made by the tenant that he would not claim a reduction The two conditions together ensure the same invariable rent to the landlord at all times and under all cricumstances. But the present bill while holding the landlord liable on the covenant in favor of the tenant, proposes to grant immunity to the tenant for the consequences of the covenant in favor of the landlord. The retrospective effect proposed to be given to these provisions will undo old and legal contracts, and make uncertain and variable rents hitherto known as fixed and invariable. In short this provision will ruin the landlords. The existing law on the subject cannot be said to be hard upon the tenant. He can, if he chooses, allow the tenure to be sold for arrears of rent and if the tenure is a losing concern, it will come into the hands of the landlord and relieve the tenant form further loss.

Sec. 69. Is also an objectionable provision. No tenant should be allowed to force the landlord to accept rent of a subsequent period keeping the older rent in arrears. It will cause difficulty in the realisation of rent and produce confusion in the landlord's accounts. The declaration of the tenant, accompanying any such payment required by this section may be oral and this will incline unscruplous landlords as well as tenants to make false statements in this matter and be proproductive of dispute and litigation. What particular advantage this provision is intended to secure to the tenant it is not easy to find out.

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RECEIPTS AND ACCOUNTS.

However advisable it may be to force landlords to give unequivocal receipts to the tenants and keep proper and correct accounts, to force them to mention in every receipt all the particulars of the tenant's holding and even the quantity of lands held by him, together with the details about Bunker Julker and Phulkar, would hamper the collection of rent and make it a costly affair. The penalty for even an accidental omission or mistake is also very great.

And what is the advantage the landlord gains for all the trouble and expense incidental to such a system of collection. None whatever. He cannot realise his rent as the government does by issuing a certificate. His demands are as much liable to be contested under the present Bill as they are under the existing law. Not so much as a presumption is created in his favor. Why then all these forms, all these pains and penalties.

Deposit of rent—Cl. b of Sec. 73, is very vague and indefinite. It allows the tenants to avoid payment of rent to the landlord and deposit the same whenever he chooses. This will lower the landlord's prestige and make the relationships of landlord and tenant more artificial than it is even at present.

There should be some provision in the Bill by which the tenant would be bound to make a verified application on such an occasion. This might operate as a check on tenants inclined to drag their landlords to court, by resorting to it themselves. The words "payable by the tenant and " in subsection 3 of Sec. 74 may be the cause of creating some ambiguity in the meaning of this subsection. The sense would be

clearer, if those words were omitted. The subsection as it stands might be contended to mean that the receipt will act as a full acquittance for all the rent that may be payable by the tenant down to the period for which the deposit may be made. While on the subject of deposit it is proper to make he re some observations necessary relating to the limitation of suits for arrears of rent where a deposit has been made.

Schedule IV. Part I. Article. 2.—Cl. (a) provides that a suit for the recovery of any arrear of rent down to date of deposit must be brought within 6 months from date of the *deposit*. Under the existin g law such a suit may be brought at any time within 6 months from date of the *service* of a notice of the deposit on the landlord. This notice is served upon the receipt of the deposit. The present Bill does awa y with the provision of serving a notice on the landlord in the first instance. At first a notification is provided to be affixed in the office of the officer receiving the deposit. Then if no one appears and claims the deposit within 15 days from the date of the aforesaid notification, a notice will have to be served on those who may be deemed entitled to the deposit.

It is clear that the landlord is not at all likely to know of the deposit until a notice has been served on him. The notification in the office is almost useless. There being no time fixed within which the notice is to be served on him it may be served a very long time after the deposit. This will undoubtedly prejudice the landlord who may have to contest the fairness and propriety of the deposit. There seems to be no reason for a change in the existing law and for the curtailment of the period of limitation on the subject.

CHAPTER IX.
IMPROVEMENTS.

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Regarding the registration of improvements one observation is necessary. The landlord should not be compelled to register improvements effected before the present Bill is made into law. It would be very hard upon the parties if they were to be forced to have such improvements registered and that within 12 months, as provided by Cl. a of sub sec. 3 of Sec. 91, after the commencement of the Act.

The above mentioned Cl. a. taken with Cl. a of sec. 46 of the Bill will virtually preclude enhancement on the ground of improvement made at any time before the Act. The registration of such improvements will open a wide channel for litigation. Instead of imposing such a heavy penalty for non-registration of improvements made before the passing of the Act, the matter may be left optional with the parties—and the clause relating to the limitation for registration of such improvements expunged.

Sec. 90 taken in conjunction with sec. 93, will entitle every non-occupancy ryot to build pucka houses and excavate tanks and enable him to do so without any risk of ejectment. Now a days an occupancy ryot cannot do such things except on payment of a selami to the landlord. These sections if passed into law without any restriction would not only take away part of his legitimate gains from the landlord without any adequate compensation but leave him under a prospective liability to a heavy compensation to the ryot for works done against his will in cases where he wishes to eject him on reasonable grounds. This is undoubtedly very hard on the landlord. A non-occupancy ryot should not be allowed such privileges at the expense of the landlord.

SURRENDER AND ABANDONMENT.

Some provision should be made allowing the court to presume surrender in case of dispute ; and voluntary abandonment of cultivation for a year, except in certain exceptional cases as provided in Cl. a of sec. 37, without payment of rent should be presumed to be a surrender of the right and interest of the ryot in the holding until the contrary is proved.

MEASUREMENTS.

Why should not the landlord be allowed to measure his own lands at his own cost whenever he chooses ? Why should he be restricted in doing it for a period of 10 years following one measurement ? How is he to ascertain any encroachment that may have been made by a tenant on the surrounding waste lands or on the lands of a neighbouring ryot. Why should an auction purchaser be barred if he chose to measure the lands purchased by him more than 2 years after his purchase. The restrictions referred to above are most arbitrary and utterly subversive of the landlord's rights. These restrictions are based upon no sound principle or policy and are altogether unwarrantable.

There are various reasons other than those mentioned in clauses a and b of sub-section 2 of Sec. 9, which necessitate a measurement of the lands by the landlord. To limit the landlord's right to measure to those cases only would therefore be very prejudicial to him.

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MANAGERS.

The provision relating to managers will deal a death blow to the coparcenary estates of the

country. It is well known that the largest portion of the landed interest in the country is held jointly by co-sharers. The present Bill instead of facilitating the realisation of rent by co-sharers reproduces some provisions of a Regulation almost obsolete and well nigh forgotten and about three quarters of a century old. With so many provisions in the Bill for protection of the ryot's interest, these provisions about the appointment of managers are perfectly unnecessary. These provisions if re-enacted will denest grabi patio of the landlords of the management of their estates.

Mueh has been said on this subject from time to time so instead of entering into the details a humble protest is submitted against the enactment of these provisions.

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CHAPTER XI.

TABLES OF RATES.

SECS. 123—134

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There will be found so many varieties in the classes of land and in the rates of rent payable for the same even in adjoining localities, not only on account of difference of soil and situation of the lands and such other causes, but also on account of the kinds of crops cultivated in the lands and the classes of tenants holding the lands as well as on account of peculiar customs prevailing in different localities relating to the holdings, that it will be almost impossible to prepare one set of Tables covering and governing a large area.

The chief advantage proposed to be gained by the preparation of these Tables depends upon their general applicability in all classes of cases. In order to obtain that, either some existing differences and distinctions too difficult to be embodied in a general Table, must be arbitrarily ignored and done away with, at the expense of either the landlord or the tenant, or numerous sets of Tables must be prepared at an enormous cost and with great delay. It is not unknown what a long time the Butwarra of an estate takes. And at least one of the causes for it is the classification of lands and their assortment by comparison. How much more difficult, dilatory and expensive the preparafion of the proposed Tables will be when made applicable to large tracts of the country it is easy to imagine. For the above reasons it is apprehended, that the utility of the Tables will not be very great; and the making of these conclusive evidence of the rates will be very injurious, when brought to bear upon questions raised in particular cases.

The preparation of these Tables, when made for large areas, will not excite particular interest and invite all the necessary objections, nor their details be discussed with that amount of care and precision, as the nature of the case requires. In matters of pubic and general interest the people of the country are yet apathetic; so these Tables will generally be made *exparte*, published and confirmed, and their injurious effect known and taken notice of at a time when there will re-no chance of any amendment.

The proviso contained in section 125 is not only unfair but will act most injuriously to the landlord when he will have to enhance rents on the basis of these Tables. The restrictions embodied in the sections relating enhancement of the rent of occupancy ryots regarding the maximum limit will then necessarily be super added to the restriction made by this proviso. The Tables will have been prepared after a considerable consession has been made to the ryot, and then when these will be applied to particular cases, another concession will have to be made.

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CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

SECS. 135—138.

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The law and procedure prescibed for the record of proprietor's private lands are unnecessary and expensive. In cases of dispute as to whether a particular piece of land is the private land or not the civil court may be left to decide the question.

A serious objection is taken to the most arbitrary restriction imposed by section 138 upon the creation of Khamar lands, and as it is submitted that the landlord should be allowed to retain the right to create Khamars from time to time as occasion may arise, the provisions contained in sections to 135 to 137 become not only unnecessary but also impossible for being worked out.

It is submitted that the restriction proposed to be imposed upon landlords is most arbitury and is a distinct invasion upon their proprietory right.

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CHAPTER, XIII.

DISTRAINT.

(Secs. 139-158.)

Although the realization of rent by distraint is not much in vogue in East-Bengal, and although the restrictive measures proposed will not therefore be very much felt by the landlords of East Bengal, yet it is necessary to object on principle to the procedure provided by the Bill.

The only important change made in the present Bill from the original Bill of 1883, is the reduction of the amount of Court fee payable on an application for distraint.

The procedure prescribed, is far more lengthy and costly, than that under the existing law. The most important right, which the landlords had, of distraining the standing and ungathered crops, of their own motion and by their own process, is taken away, without giving them any the least facility for the collection of their rent.

In short, the object of the law of distraint, viz. speedy and least expensive mode of realisation with the least harassment of the tenants, is entirely lost by the procedure adopted in the Bill. Hence the proposed provisions instead of being any improvement on the existing law, make the very important and valuable right of distraint so long enjoyed by the landlords altogether useless for them.

What is named as distraint, is virtually a suit for arrears of rent with attachment before judgement and with this disadvantage, that while in a regular suit for rent, the landlord can sue for the whole arrears, under this process he can sue for only the arrears of the current year.

CHAPTER, XIV.

JUDICIAL PROCEDURE.

(Secs.-159-174.)

As already pointed out, it was one of the main objects of the original Bill of 1883., which has been revised and cast into the present shape by the Select Committee, to give reasonable facilities to the landlord for the recovery of his rent. The agitation which led to the consideration of the whole question of the law of landlord and tenant in Bengal and caused the submission of different measures on the subject from time to time, was also based principally upon this question. The procedure relating to the recovery of rents is therefore *the* portion of the bill with which the landlords are prncipally concerned.

Although the Select Committee have bestowed their anxious consideration on the subject in question, it must be said however that no satisfactory result has been obtained.

If arrears of rent must be recovered by a suit only it. is evident that the legislature cannot make realisation sufficiently speedy, though the procedure for such a suit mey be a good deal summarised. In every suit there must be the issue of summons, proof of service where the defendant does not appear, proof of the claim, the framing of the decree and its enforcement either by arrest or attachment. The defendant may appear and contest service of the summons and the demand, and the suit becomes contentious. Where the defendant appears at the original hearing and contents the demand, evidence on both sides must be gone into and there must be a sifting enquiry before decree. The above mentioned procedure must be followed more or less in detail, and however much may the details be cut short, in practice it will be found to take always more than three months, and very often 6 months, before a decree is obtained in contested cases. The legislature cannot sufficiently form an idea of the practical difficulties which hinder the speedy trial of suits. Process after process may be taken for the attendance of witnesses and the case delayed. The Judge adjourns the case from time to time to suit his own convenience, and the party who has his witnesses in attendance, has got to drag himself to court from day to day and bear the costs incidental to such attendance. The Moonsifs are heavily pressed with work and much fault connot be found with them. Knowing fully well that a case will not be taken up at the first hearing, often times the witnesses dont appear even when they could, and as often the witnesses do not allow parties to take out fresh processes as a matter of course. Whoever has carefully looked into the procedure of suits, in a court of first instance, will bear out the truth of the statements made above. Then after the decree there comes the appeal against such decree, that also takes up at least 3 months' time even in cases of rent suits of the nature of small cause court cases. How then can the landlords be satisfied with only a partial abridgment here and there of the lengthy procedure of a suit. The rules that the High Court may frame under sec. 159 and the effect such rules may have on the procedure of rent suits it is not possible to conjecture.

Sec. 159. Simply avoids the difficulty for the present—and throws the whole burden and responsibility on the High Court.

Secs. 164 and 165. Are the only two Sections enacted in the interests of the landlord, and

which distinguishes the procedure for rent suits from that for any other suit. But the benefit likely to flow from them is nominal. They will not induce the tenant to admit anything substantial.

Then again the effect of the above sections will be well nigh neutralised by sec 166, which gives a very wide discretion to the court to allow the tenant to pay even the admitted amount by instalments. There should be some provision in conjunction with sec. 165 under which the landlord may be able to take out the money immediately after it has been deposited.

The taking away of the right of appeal in rent suits will not mend matters much and on the contrary may be prejudicial to both parties.

It should however be provided that no application for retrial of a suit decided ex-parte, nor an appeal shall be admitted when filed by a tenant, until the amount decreed has been deposited in Court.

When the Bill makes such stringent provinsions relating to receipts of rent and accounts to be kept by the landlords at a great cost and trouble, it would be fair and an act of bare justice to allow them some substantial advantage in the shape of a speedy method for realization of their rents.

The only two modes now in existence are the summary sale procedure, and the certificate procedure. Both these procedures may with certain modifications be made equally applicable to the case of occupancy ryots and the last *i. e.* the certificate procedure may be applied to the case of non-occupancy holdings. Very heavy penalties may be imposed upon landlords for the abuse of any of these rights.

Without any of these procedures the realization of rent will remain as difficult in future as it is now.

Sec. 170. Eventually does away with all ejectment suits and gives an undue advantage to the delinquent tenant.

The requisition on the part of the landlord prescribed by subsec. 1 of this section is perfectly unnecessary. No landlord is likely to rush into court if there be the smallest chance of settling the dispute amicably.

The words "reasonable compensation" and "reasonable time" used in this subsection are very indefinite. These, together with the provision relating to requisitions will undoubtedly raise unnecessary difficulties to the entertainment of a suit for ejectment. And oftentimes these preliminary objections will prove fatal to an otherwise good cause. These provisions will increase the mass of evidence and make cases more lengthy and costly.

If the tenant has forfeited his holding by acting against his landlord, he should not be allowed any indulgence on these preliminary grounds. Subsections 2 and 3 will only prolong litigation between the parties and make the relationship between the parties more inimical.

Subsection 3 and the provision relating to requisitions should however on no account be retained.

The words "contrary to local usage" used in cl c of sec 171 at once neutralises the whole effect of the clause, opens a wide door for dispute and makes the provision altogether indefinite and vague.

CHAPTER, XV.

Sale for Arrears Under Decree.

Secs. 175-193.

All transferable holdings are hypothecated for their rent. It has been also declared by the present Bill, that the rent of such a holding is a first charge on the holding (Sec 77.)

Hence, when a decree for arrears of rent has been obtained against such a holding, that decree may be looked upon in the light of a mortgage sale decree passed under the Transfer of Property Act. In execution of such a decree no attachment need be made. It may advantageously be provided that only a sale proclamation shall be needed in such a case. It would save a great deal of time, and be less costly.

If the circuitious, dilatory and expensive proceedure, relating to the sale of these holdings be retained, by which in the first instance all registered and notified incumbrances are protected and rendered liable to cancelment at the desire of the auction purchaser only in case of a second sale, the first sale failing to fetch the decretal amount, it would be only fair to do away with the process of attachment in order to counterbalance the delay and cost that would be caused by the abovementioned procedure.

The abovementioned procedure relating to the sale of a holding twice over and the provision that the auction purchaser will have to annul encumbrances by a particular act within a particular time appear also to be unfair. With the provisions embodied in the Bill for the protection of under tenures and sub-tenancies by payment of the arrears due, it would not be at all unfair to sell the holdings at once free from all

encumbrances, excepting those mentioned in the Bill as protected interests. Such a provision would be in keeping with the existing law both as to sales for arrears of Revenue of Estates as well as to sales for arrears of rent of transferable tenures. The change in the existing law on the subject will only add complications and will have a tendency to make the realisation of rent insecure and dilatory.

If the above mentioned provision be retained there will be another inconsistency. When a patni tenure will be sold under a decree for arrears of rent it will be sold subject to the registered and notified encumbrances ; when the same tenure will be sold summarily under Chapter XVI the auction purchaser will have the power to annul such encumbrances. This distinction will be productive of confusion and loss to the parties concerned. No particular object is gained by creating those anomalous distinctions. No particular objection would be taken to sec 182 as objection has already been taken to the conversion of occupancy holdings at a fixed rent or rate of rent into tenures.

There is a further objection to the limitation prescribed by sec. 184 for the annulment of encumbrances. One year from the date on which the auction purchaser first has notice of the encumbrance is rather short and very indefinite. The question when he had notice will be a matter of hot dispute. Again, where the auction purchaser is the decre-holder himself, his right may be barred before he becomes the purchaser. He may have received notice of the encumbrance under sec. 198 more than a year before the tenure is brought to sale. Hence if any limitation is to be prescribed it should be within 3 years or at last 2 years from the date of confirmation of the sale irrespective of the question of notice.

When objection has been taken to the general principle of the sale of tenures, once subject to encumbrances and again with power to annul them, it is needless to say that sec. 185 is very objectionable.

The provision that the landlord is at the most entitled to the rent of only six months out of the period intervening between the institution of a suit for arrears and a sale in satisfaction of a decree in such suit is most arbitrary and unreasonable. It is well known that a tenure or holding is not likely to be sold within this short period of six months. And supposing it is sold within that time it would be at least two months if not contested, before the sale is confirmed. The auction purchaser's rights and liabilities will commence from the date of confirmation of the sale. Hence, why should the landlord be defrauded of his just arrears, when the security for the payment of the same is lost by the sale. The only just provision that can be made on the subject is that the decree-holder will be entitled to have the arrears that may accrue from the date of suit down to the date of confirmation of the sale.

Sec. 192 is a most objectionable provision. It will not only act as an incentive to the creation and setting up of false encumbrances but be a license for the same. It will be a fruitful source of dispute and litigation, ruinous to the ryots themselves and detrimental to the interests of the landlords.

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CHAPTER XVII.

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The objectionable nature of the restrictions on contract and of the retrospective effect given to such restrictive provisions have been incidently commented upon. It is therefore needless to repeat what has been said. Suffice it to say that the provisions contained in Sec. 210 are most arbitrary, unfair and one-sided. In short, the provisions are neither based upon any good policy nor can they be supported upon any sound principle. The ryot has full liberty to mortgage, sell and sublet his holding on any terms he may choose. He can make any terms in case he is granted a permanent mokrari lease. Yet he cannot be deemed capable of making any contract that may trench upon some particular provisions of the Bill. This surely is unwarratable and indefensible.

Sec 216, will not as is supposed cover all cases of homestead lands of ryots.

The Bill is admittedly silent—on the question of Bastu lands of tenants other than ryots. Nor does it make any provision regarding such lands held by tenure holders, when the same is not held as part and parcel of the tenure. Perhaps it is understood that this last class of cases falls within the division of Bastu lands held by tenants other than ryots. There are various incidents attached to homestead lands. To leave all these incidents to be settled wholly by local custom may not be very advantageous to the parties concerned.